

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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*Counsel to Tempur Sealy International, Inc. and its
Affiliates*

In Re:

Bed Bath & Beyond Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-13359

Hon. Judge Vincent F. Papalia

(Jointly Administered)

**RESERVATION OF RIGHTS OF TEMPUR SEALY INTERNATIONAL, INC. TO THE
NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND PROPOSED SALE**

Tempur Sealy International, Inc. ("Tempur Sealy"), by its undersigned counsel and on behalf of its subsidiaries and affiliates, files this reservation of rights (this "Reservation of Rights") in connection with the *Notice to Contract Parties to Potentially Assumed Contracts and*

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

Unexpired Leases [Docket No. 714] (the “Assumption Notice”) and the Proposed Sale (defined herein).² In support of this Reservation of Rights, Tempur Sealy respectfully states:

BACKGROUND

1. On April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (this “Court”).

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Debtors and Tempur Sealy or its subsidiaries and/or affiliates are parties to the following agreements (collectively, the “Agreements”):

- New Vendor Information Form and Vendor Confidentiality Agreement between Comfort Revolution and Bed Bath & Beyond Inc. dated 5/17/2010
- Retailer Agreement (Sealy) between Sealy Mattress Manufacturing Company, LLC and Bed Bath & Beyond Inc.
- Retailer Agreement (Stearns & Foster) between Sealy Mattress Manufacturing Company, LLC and Bed Bath & Beyond Inc.
- Vendor Direct to Consumer Agreement between Sealy Mattress Manufacturing Company LLC and Bed Bath & Beyond Inc. dated 1/18/2018
- Vendor Allowance Agreement between Tempur-Pedic North America LLC and Bed Bath & Beyond Inc. dated 9/21/2019
- Vendor Allowance Agreement between Tempur-Pedic North America LLC and Bed Bath & Beyond Inc. dated 9/21/2018
- Vendor Allowance Agreement between Tempur-Pedic North America LLC and Bed Bath & Beyond Inc. dated 12/15/2016

4. On April 23, 2023, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures, (B) Approving the Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner*

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Assumption Notice or Bidding Procedures Order, as applicable.

of Notice Thereof, (E) Approving the Form APA, and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases and (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief [Docket No. 29] (the “Bidding Procedures Motion”) pursuant to which the Debtors sought, among other things, entry of an order establishing bid procedures for the sale (the “Proposed Sale”) of substantially all of the Debtors’ assets and procedures for the assumption and assignment of the Debtors’ executory contracts.

5. On April 25, 2023, this Court entered the *Order (I) Approving the Auction and Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 92] (the “Bidding Procedures Order”) which, among other things, approved the Bidding Procedures and assumption and assignment procedures.

6. As contemplated by the Bidding Procedures Order, on June 13, 2023, the Debtors filed the Assumption Notice which identifies certain executory contracts and unexpired leases that the Debtors may assume and assign in connection with the Proposed Sale.

7. On June 22, 2023, the Debtors filed the *Notice of Successful Bidder and Backup Bidders With Respect to the Stalking Horse Bid and June 21, 2023 Auction* [Docket No. 877] (the “Notice of Successful Bidder”) identifying Overstock.com, Inc. as the successful bidder for the Debtors’ IP assets and mobile platform (subject to certain exclusions), and JOWA Brands LLC as the backup bidder solely with respect to certain IP assets associated with the Debtors’ Wamsutta brand, and Ten Twenty Four, Inc. as the backup bidder solely with respect to the Debtors’ Beyond.com assets. The Notice of Successful Bidder includes the asset purchase agreement associated with the Successful Bid (the “Overstock APA”); however, the Overstock

APA, as filed, does not include the Disclosure Schedules (as defined in the Overstock APA) related to the Acquired Assets (as defined in the Overstock APA), which, among other things, identify the executory contracts that are Transferred Contracts (as defined in the Overstock APA) and other assets, properties, and rights that are Acquired Assets (as defined in the Overstock APA).³

8. Although the Agreements are not listed on the Assumption Notice and the Debtors, through counsel, have stated that the Agreements are not being assigned as part of the Proposed Sale or otherwise impacted by the Proposed Sale, Tempur Sealy has not been able to review the Disclosure Schedules (as defined in the Overstock APA) to confirm its rights are not impacted in any way. Accordingly, out of an abundance of caution, Tempur Sealy submits this Reservation of Rights to preserve and reserve Tempur Sealy's rights under the Agreements, the Bankruptcy Code and applicable law, as it relates to any potential assumption and assignment of the Agreements by the Debtors and the Proposed Sale.

RESERVATION OF RIGHTS

9. Tempur Sealy expressly reserves all of its rights, including, but not limited to, (i) the right to argue that the Agreements are not executory, not capable of being assumed and assigned and/or are no longer valid or have expired; and (ii) its setoff, recoupment and any other legal rights that exist in law and equity with respect to the Agreements in connection with the Proposed Sale. Additionally, Tempur Sealy reserves its right: (a) to supplement and/or amend this Reservation of Rights, (b) to assert any additional objections with respect to any proposed assumption and assignment of the Agreements, the proposed Sale, the Overstock APA and the proposed Sale Order, and/or (c) assert any further objections as it deems necessary or appropriate as it relates to the Agreements and/or the interests of Tempur Sealy.

10. As of the date of this Reservation of Rights, Tempur Sealy is owed by the Debtors not less than \$4,858,579.08 under the Agreements.

11. Nothing in this Reservation of Rights is intended to be, or should be construed as, a waiver by Tempur Sealy of any of its rights under the Agreements, the Bankruptcy Code, or applicable law.

Dated: June 26, 2023

FROST BROWN TODD LLP

/s/ Jordan S. Blask

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